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City Club of Portland

BULLETIN

Portland, Oregon

Vol. 67, No. 21

Westin Benson, Mayfair Room

Noon

Friday, October 24, 1986

DEBATE BETWEEN LES AUCOIN and TONY MEEKER

(Candidates for First Congressional District)

The importance of federal policy to Oregon's future has been underscored by many speakers appearing before the City Club over the past several years. The First Congressional District represents a broad spectrum of Oregon interests, extending from Portland to the coast and encompassing parts or all of eight counties.

This Friday, *State Senator Tony Meeker*, the challenger and republican candidate, and *Congressman Les AuCoin*, the incumbent and democratic candidate, will discuss their race to represent the First Congressional District. Each will present opening statements, ask questions of each other, respond to questions from a City Club panel, and answer questions from the audience.

RESERVATIONS AND CANCELLATIONS: Call 222-2582 before 2:00 pm on Thursday, October 23. RESERVATIONS LIMITED TO MEMBERS ONLY UNTIL 5:00 PM ON TUESDAY, OCTOBER 21. Vegetarian meals must be reserved on reservation line. \$8.50 members; \$10.50 guests. Doors open at 11:30 am.

PRINTED INSIDE FOR DISCUSSION AND VOTE FRIDAY, OCTOBER 31:

STATE MEASURE #5

(Legalizes Private Possession and Growing of Marijuana for Personal Use)

Richard Lakeman, Chair, for the Majority

Laura Graser, for the Minority

STATE MEASURE #8

(Prohibits Mandatory Local Measured Phone Service)

Barton DeLacy, Chair

STATE MEASURE #16

(Phases Out Production of Nuclear Weapons Components)

B.J. Seymour, Chair, for the Majority

Ted Falk, for the Minority

*"To inform its members and the community in public matters and to
arouse in them a realization of the obligation of citizenship."*

COMING EVENTS

Friday, October 31: November General Election Ballot Measure Reports. Reports on eight ballot measures will be presented to the membership for discussion, debate and vote. **THIS MEETING WILL BE LIMITED TO CITY CLUB MEMBERS ONLY. MEETING WILL START EARLY AT NOON.** (Westin Benson, Mayfair Room)

Friday, November 7: Three veteran lobbyists will discuss the results of the November 4 general election in a program entitled "What Did We Vote For?" (Westin Benson, Mayfair Room)

AUCOIN/MEEKER**DEBATE BROADCAST TIMES**

The October 24 debate between *Congressman AuCoin* and *State Senator Meeker* will be taped for broadcast on Oregon Public Broadcasting Television, Channel 10, at 9:00 pm that same day, Friday, October 24. The program

will be live on Oregon Public Broadcasting Radio, 91.5 FM. KPBS Radio broadcasts Friday programs at 6:00 am Saturday on 89.9 FM and at 6:00 pm Sunday on 1450 AM. TCI Cable broadcasts on Channel 7 on Monday at 7:00 pm, Thursday at 10:00 pm, and Sunday at 10:00 am and 6:00 pm. Tualatin Valley Cable Television broadcasts on Channel 12 at 6:00 pm Tuesday and 1:00 and 8:00 pm Thursday.

**STANDING COMMITTEE NEWS:
GOVERNMENT & TAXATION**

The Government & Taxation Committee has convened for the 1986-87 term, and is beginning to investigate issues to identify the appropriateness of those issues for Club studies, programs or other action. The Committee is now looking into taxation as it relates to economic development, property tax exemptions, and planning for the future of Portland's water supply. The committee is monitoring the City of Portland Police and Fire pension and disability fund. Later this term the Committee may look into tax increment financing and the initiative and referendum process.

Chair Clyde Doctor, Manager, Public Policy, PP&L, has appointed the following Club members to the Committee: *Greg Englund*, *Curt Gleaves*, *Ruth Handlin*, *Janice Heber*, *Kathryn Imperati*, *Hari Nam Khalsa*, *Colleen Littell*, *David Ludwig*, *Gladys McCoy*, *Steve Rudman*, *Mark Rutzick*, *Michael Schenker*, *Marc Sellers*, *Michael Silver*, *Theresa Stempel*, *Chris Thomas*, *Dick Tracy*, *Sheryl Warren*, *Leslie Wheeler*, *Gail Woodworth*, and *Edith Zavin*. *Tom Stearns* is Vice Chair. *Kris Olson Rogers* is the Committee's Research Advisor and *Norm Smith* is the Committee's Program Advisor.

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NEW MEMBERS

The City Club welcomes the following new members:

Spencer Burton, Economic Consultant, Hobson & Associates, sponsored by Rob Gaudin.

Ronald Felber, Owner/Consultant, Felber & Associates, sponsored by Judy Rice.

Brad Jones, Executive Director, Victim Offender Reconciliation Program of Multnomah County, sponsored by Dan Mayer.

Kristen Kern, Middle East Library Assistant, Portland State University, sponsored by William Lesh.

Carol Marmaduke, sponsored by Phyllis Berger.

Michael Swanson, County CEO, Clackamas County, sponsored by Ardis Stevenson.

William Warner, General Manager, Regis McKenna, Inc., sponsored by Jean Armstrong.

Pam Wilson, Marketing and PR Specialist, Holladay Park Medical Center, sponsored by Patrick Davis.

Report on
"LEGALIZES PRIVATE POSSESSION AND GROWING OF MARIJUANA
FOR PERSONAL USE"
(State Measure No. 5)

Question: "Shall law forbid permits, licenses and criminal penalties for possessing or growing marijuana for personal use?"

Explanation: "This measure would enact a new Oregon law. The law would bar subjecting persons 18 years or older to criminal penalties or to fines or forfeitures, or to permit or license requirements, for private possession or growing of marijuana solely for personal use. The law would create a defense to criminal charges under ORS 161.055. The measure provides that if a court declares part of the new law invalid, the rest of the law is unaffected."

To the Board of Governors,
City Club of Portland:

I. INTRODUCTION

A. Explanation of Initiative

If State Measure No. 5, the Oregon Marijuana Initiative (hereafter "OMI" or "Measure 5") passes, it will be completely legal for persons over 18 to grow and possess marijuana for their own private, personal use. Growing or possessing for private, personal use would not be a crime or a violation, nor could the government tax or license the possessor or grower. Selling marijuana still would be a crime.

Measure 5 would provide an "affirmative defense" under ORS 161.055. The mechanics would be these: A person is charged with possessing or manufacturing marijuana under existing law. During the trial, the state proves that the defendant possessed or grew marijuana. The defendant then has an opportunity to prove, by a preponderance of the evidence, that the marijuana was grown or possessed in private for his own consumption. The state then has a chance to disprove the defendant's evidence beyond a reasonable doubt.

B. Basic Goals of Sponsors

Measure 5 sponsors wish to remove any state government involvement in the regulation of an adult (a person 18 or older) growing or possessing marijuana for the adult's own consumption. The initiative also would forbid the licensing of growing and possessing marijuana.

C. Previous City Club Research

In 1972 a City Club Committee studied legal sanctions imposed upon the possession, use and sale of marijuana. A Majority concluded that the cultivation and sale of marijuana should be legalized and controlled by the state. A Minority agreed that personal use and possession of marijuana should be legalized but opposed legalization of the sale of marijuana. The Club adopted the Majority report.

The 1972 Committee was charged with taking a comprehensive look at penalties for possession, use and sale of marijuana. Your 1986 Committee

was charged with evaluating only the issues presented by Measure 5. Although your 1986 Committee drew upon conclusions reached in the 1972 report, the 1986 Committee did not take into account the position adopted by the City Club in 1972 in reaching its own conclusions and making a recommendation on Measure 5. This report addresses only one particular way to legalize certain aspects of marijuana, an approach that was not considered by the 1972 Committee.

II. HISTORY AND BACKGROUND

A. Marijuana Legislation

1. History

At the turn of the century, states regulated narcotics (1) indirectly under their general "poison laws." If deadly amounts of cocaine, heroin, opium, morphine, etc., were present in medicines sold to the general public, the "poison laws" would be applied to restrict their sale. States also started campaigns to educate the public on the dangers of using narcotics.

The "street use" of drugs for pleasure or "kicks" was becoming popular. This "street use" of opium (and heroin, cocaine, and morphine) was a major reason the states first started to enact legislation. By 1911, legislation in 18 states regulated everything from "opium dens" to mere possession. Oregon was the first state (in 1877) to regulate mere possession of a narcotic (cocaine) without a prescription.

In 1914, the Harrison Act was enacted, requiring registration and payment of an "occupational tax" by importers, producers, dealers, or sellers of opium, cocaine, or their derivatives. The law was enforced by the Internal Revenue Service and the Treasury Department. Regulation of possession was left to the individual states. New York was the first (in 1914) to list marijuana among its "prohibited drug list." Utah was the first to enact laws (in 1915) regarding sale and possession of marijuana. By 1931, a total of 23 states had enacted such laws. By 1951, all states had such marijuana laws.

In 1932, the Uniform Narcotic Drug Act was passed. Because the federal drug laws were primarily tax laws and state statutes were enormously different from state to state, a need was recognized for uniform state laws. After five or six drafts and redrafts of the Act, marijuana was not included among the specifically named narcotics. The Act instructed states that wished to include marijuana to simply add it to the definition of "narcotic drugs." By 1935, only 10 states had ratified this Act.

In 1937 came the Marihuana [sic] Tax Act, fashioned after the Harrison Tax Act. Only persons who registered with the government and paid an "occupational tax" could deal in marijuana. Because no "authorized" use of marijuana existed, however, persons who registered with the federal government could be arrested under state statute.

In 1951, the Boggs Act was created, which significantly increased penalties for illegal narcotics and marijuana. This law also allowed immigration officials and border guards to carry arms and enforce drug laws. The states soon followed suit with tougher penalties of their own. In 1956, the passage of the Narcotics Control Act escalated further the penalties for drug violators and, once again, the states responded in kind.

In the early and middle 1960s, a new phenomenon arose: Illegal drug use began to break out of subcultures and to spread through larger segments of society. In 1965, the control of drug enforcement passed from the Treasury Department to the Bureau of Drug Abuse Control (Food and Drug Administration), which created criminal penalties for the illegal manufacture and sale of depressant, stimulant and hallucinogenic drugs. Again, in 1968, control passed to the Justice Department's new Bureau of Narcotics and Dangerous Drugs. This bureau drafted legislation that would nationalize control of the drugs under the bureau's jurisdiction (including marijuana). In 1969, in Leary v. U.S., 395 US 6 (1969) the United States Supreme Court held that the order-form procedure necessary to meet the requirements of the Marihuana [sic] Tax Law forced an individual to incriminate himself in violation of the Fifth Amendment of the U.S. Constitution. (2) Because of Leary, the Comprehensive Drug Abuse Prevention and Control Act was passed in 1970. This new Act regulated narcotic drugs, "dangerous drugs," and marijuana.

2. Summary of Current Federal and State Legislation

a. State Laws

Most states have passed the Uniform Controlled Substances Act or similar laws. Eleven states, (3) including Oregon, have made major changes and have legalized or "de-criminalized" (made a violation) the possession of small amounts of marijuana. In most other states, not including Oregon, possession of small amounts is a misdemeanor (maximum jail time is less than one year and a possible fine).

Alaska is the most liberal. Since 1975, possession of any amount for personal use in the home is legal. Cultivation in private is a violation. Public use or display of more than an ounce or possession of more than four ounces is a misdemeanor.

Twenty-five states (not including Oregon) authorize "conditional discharge" (4) for the first possession offense. In eight states, conditional discharge is available even for possession of large amounts, e.g., 50 pounds (Delaware) or 100 pounds (Louisiana) or "any amount" (Iowa, Kansas, Oklahoma, Utah, Wisconsin, and Wyoming). In two states (Massachusetts and West Virginia), conditional discharge appears to be the principal penalty for the first offense.

Many states (including Oregon) allow some medical use. (5)

b. Federal Law

The federal Controlled Substances Act (6) makes the possession of any amount of marijuana a misdemeanor and the cultivation or sale a felony. Maximum penalties are five years in prison and a \$250,000 fine for under 50 kilograms, and fifteen years and \$250,000 for more than 50 kilograms (\$500,000 for growing more than 50 kilograms.)

Because federal law would remain in effect after passage of Measure 5, the United States attorney could prosecute people in Oregon for conduct that had been decriminalized by the state measure. On the other hand, the federal law probably would not preempt (that is, overrule) the measure. (7) The two sets of laws would co-exist. Current Oregon law on the medical use of marijuana already conflicts with the federal law, which does not have a similar exception for medical use.

3. Summary of Oregon Laws Related to MarijuanaPENALTY (MAXIMUM PUNISHMENT)

OFFENSE	"A" Fel- ony (20 years, \$100,000 fine)	"B" Fel- ony (10 years, \$100,000 fine)	"A" Misdemeanor (1 year, \$250,000 fine)	Violation (\$100 fine)	Not a [State] Crime
BY ADULT*					
Growing any Amount	X				
Sell to Adult		X			
Sell to Minor (under 18)	X (with excep- tions)		Selling less than one ounce to minor less than 3 years younger than seller	Selling less than 5 grams to minor less than 3 years younger than seller	
Possess		One ounce or more		Less than one ounce	
Give away to adult	X (with excep- tions)		Giving less than an ounce	Giving less than 5 grams	
Give away to minor	X (with excep- tions)		Giving less than an ounce to minor less than 3 years younger than giver	Giving less than 5 grams to minor less than 3 years younger than giver	
"Frequenting" a place where marijuana (etc) is used, sold			If one ounce or more is present	If less than one ounce is present	
Driving under the influence of marijuana			X		
Dispensed by physician for patients in chemotherapy, with glaucoma					X

*Offenses by minors are dealt with in juvenile court.

Sources: ORS 475.992, 475.995, 167.222, 813.010

B. Current Law Enforcement

1. Enforcement is a Low Priority for Many Oregonians

As with all other issues relating to marijuana, information on law enforcement is incomplete and ambiguous. However, a 1985 survey of Oregon drivers on crime and the criminal justice system (8), strongly suggests that many Oregonians believe law enforcement efforts aimed at searching for marijuana grown for personal consumption (9) is a very low priority. Respondents stated that if police budgets were cut, searches for marijuana grown for personal consumption would be the most expendable function.

2. Many Arrests and Prosecutions Occur for Personal Possession and Growing

Notwithstanding the low priority that Oregonians give to enforcement of laws prohibiting possession and cultivation of marijuana for personal use, 77 percent of the 4,700 marijuana-related arrests in 1984 were for personal-use possession. (10) Thus, possession of marijuana for personal use occupies a unique position in law enforcement. On the one hand, police and prosecutors are told that Oregonians do not consider it important to arrest and prosecute adult citizens for personal-use possession. On the other hand, a large number of arrests and prosecutions occur each year for personal-use possession.

Why do so many arrests and prosecutions occur for personal use of marijuana when possessing or growing for personal use is a low priority for law enforcement? At least two reasons exist: First, because marijuana use is widespread (11), many people arrested for other crimes will be found with marijuana and will be arrested and prosecuted for the marijuana offense in addition to the other crime. Second, the police selectively use current marijuana law to prosecute individuals whom the authorities suspect have committed some other crime that for some reason cannot be prosecuted. (12) Whatever the explanation, many Oregonians are arrested and prosecuted for their personal use of marijuana. (13)

3. Current Law Enforcement Breeds Disrespect for Law

A troublesome aspect of current law and enforcement practices is the extent to which adults and minors may develop disrespect for the marijuana law. A 1977 survey on marijuana by the State of Oregon, Drug Abuse Council, Inc., found that only two high school students of 1,036 surveyed and only 4 percent of adults surveyed, indicated that "fear of arrest or legal prosecution" was the primary reason they chose not to use marijuana.

C. Medical Data

Your Committee was frustrated in trying to find conclusive data in the medical area. Although some sources claim to be definitive, these sources contradict one another. Although a number of scientists are convinced that marijuana use produces serious health effects, the verdict is neither unanimous nor final. Many years of use by millions of people, as with tobacco, may be necessary to clarify the effects of long-term use. It is difficult to draw conclusions from studies in which researchers lacked control over or knowledge of doses, potency of marijuana used, use of other drugs and tobacco, and other variables such as diet, health, exercise and attitude. In addition, no standardized definitions exist for terms used in

studies, such as "acute," "occasional," "moderate," "heavy," or "chronic" use. Following are some of the effects described in various studies:

1. Physiological Effects

The principal short-term effects of smoking marijuana are:

(a) A dose-regulated temporary increase in heart rate. Marijuana use may be a threat to those individuals with hypertension, coronary atherosclerosis and cerebrovascular disease.

(b) Reddening of the eyes.

(c) Temporary impairment of psychomotor performance, e.g., reaction time is increased for tasks involving continuous attention (such as driving or flying) or complex processing of information. Driving and flight simulator tests show clear deficits in performance.

Although knowledge is inconclusive and deficient, the long-term effects may include:

(a) Respiratory inflammation and measurable airway obstruction in heavy marijuana smokers, but effects appear reversible after use stops. Still unknown but suspected are long-term effects such as lung cancer and other lung diseases.

(b) Reproductive effects. In men, chronic use is linked to temporarily decreased sperm count and decreased sperm motility. In women, chronic use has been linked with suppression of ovulation and lowered progesterone levels. A recent study found an association between marijuana use and symptoms resembling fetal alcohol syndrome, including lowered birth weight. Research has not shown genetic effects or birth defects resulting from marijuana use.

(c) Immune system effects. Studies on animals have shown adverse effects on the ability to combat disease. Studies on humans are inconclusive.

(d) Cardiovascular system. In a normal person, marijuana use produces the same symptoms as stress. In a person with impaired cardiovascular function, marijuana use causes the heart to work harder and in some persons raises blood pressure, which the National Academy of Sciences study considers a threat.

(e) One study links chronic use with head and mouth cancers.

2. Psychological Effects

The short-term effects are: (a) feeling intoxicated - feeling "high;" (b) a heightened awareness of sensations; (c) an altered perception of time (overestimation of elapsed time); (d) an impairment of short-term memory; (e) disjointed thinking; and (f) a tendency to lose one's train of thought.

Although more scientific study is needed, a long-term effect appears to be possible amotivational syndrome, e.g., loss of energy, ambition, ability to think, and directedness. Among clinicians who work with children and adolescents, consensus is increasing that heavy, long-term use seriously interferes with work and social functioning.

Because moderate use of marijuana is widespread, it appears that occasional or moderate use has no noticeable effect on learning ability or motivation. On the other hand, excessive use appears to affect emotions, memory, reasoning and judgment.

3. Addiction

Medical literature reviewed noted that marijuana generally is not the primary addictive substance. One local medical source estimated that about 5 percent of those who seek treatment at alcohol and drug centers report primary dependence upon marijuana. Although minor physical withdrawal symptoms exist, this clinician is more concerned with what he considers to be psychological dependency. Because marijuana users often use other drugs, it is difficult to ascertain which substance underlies addictive behavior.

The 1972 City Club report concluded "...there is no evidence that there is any more causal connection between the use of marijuana leading to the use of heroin than the prior use of alcohol and tobacco leading to the use of heroin." (14)

4. Recognized Medical Uses

Although much more work by the scientific community is needed to confirm benefits of the medical uses of marijuana, these appear to be:

- (a) A decrease in intraocular pressure caused by glaucoma (but critics say a glaucoma patient would have to use marijuana constantly to relieve such pressure);
- (b) Control of severe nausea and vomiting caused by cancer chemotherapy;
- (c) Asthma relief (a little bit dilates bronchial tubes; a lot and often restricts/constricts bronchial tubes); and
- (d) Treatment of certain types of epileptic seizures as well as spastic disorders (preliminary evidence only).

5. Cause of Injury or Death to Others

The studies of effects on driving and flying have implications for the role of marijuana in motor vehicle accidents. Studying that role is difficult because the measurement of marijuana levels in blood cannot be done in a way analogous to measurement of blood alcohol levels. Studies indicate, however, that marijuana contributes to accidents to an extent similar to that of alcohol. More scientific study is needed.

6. Comparison with Alcohol and Tobacco

- a. Alcohol. One clinician said alcohol and marijuana are equally dangerous but cause different effects. Alcohol and marijuana are probably equally likely to cause a motor vehicle accident. Alcohol is water-soluble, is processed by the liver and is eliminated by the body quickly. Marijuana, however, is fat-soluble, is not processed by the liver and remains in the body for several weeks. Alcohol is psychologically and physically addicting for a small proportion of the population. This clinician says marijuana may be, too.

b. Tobacco. Marijuana and tobacco appear to have similar effects on respiratory and cardiovascular systems, although a marijuana user smokes considerably less than a tobacco user. Nicotine has been described by at least one alcohol and drug treatment center as the most addicting substance known to humans. While people appear to become at least psychologically dependent upon marijuana, the physical addiction is not as intense, if it exists at all.

D. Social Data

1. Impact on Learning and Spare-Time Activities

Your Committee found little information on this subject. Most surveys of students do not identify marijuana as a substance. Marijuana is included in the category "drugs" or the category "drugs and alcohol." Thus, respondents are unable to isolate their experience with marijuana as a substance.

In the Netherlands study (15), differences in spare-time activities of marijuana users and non-users were identified through a survey. Current users were less likely to watch sporting events or be involved in sports than non-users. Ex-users did take part in sporting activities. On the other hand, users were more interested than non-users in playing musical instruments and attending theater, ballet and concerts.

In the Netherlands study, when users were asked if they experienced any problems of concentration as a result of marijuana, nearly 75 percent said they had never experienced problems; 21 percent claimed to have suffered lack of concentration; and 7 percent reported they regularly suffered loss of concentration.

Finally, the Netherlands study concluded: "No relationship was found between the use of cannabis products and educational achievement, neither was there any difference between users and non-users as regards to the extent to which they enjoyed going to school or to work." (Cannabis means any psychoactive derivative of hemp, such as marijuana or hashish.)

2. Impact on Crime

Little evidence exists that marijuana is a cause of crime beyond crimes involving the use, possession or sale of marijuana. The Netherlands study drew the following conclusion: "There is no detectable link between the number of involvements with the police in the course of the previous year in the use or non-use of cannabis."

A University of Michigan study (16) reached a similar conclusion. The 1972 City Club report noted that "because marijuana is neither addictive nor expensive to obtain, it does not indirectly lead the user to commit other crimes to finance his purchase and use of the drug."

3. Impact on Supply

Attempts to control the supply of marijuana in our society have not eliminated its use. A study of 11th graders in Portland schools showed that 22 percent of the sample reported daily or weekly use of the drug. This frequency of use was surpassed only by caffeine. (17) In Alaska, where decriminalization has occurred, 50 percent of students were likely to

have tried marijuana by the time they graduated. (18) Finally, a 1982 study reported that 90 percent of a nationwide sample of high school seniors found marijuana "fairly easy" or "very easy" to get. (19) Despite periodic restrictions on supply, the percentage of people who have used the drug appears to have increased.

The Netherlands decriminalized the use of marijuana several years ago, which led to widespread availability of the drug. Recent studies indicate that first-time use has continued to rise, but the total number of daily users has not increased since 1976. The average starting age for marijuana use was 17.1 years, and only 1.6 percent of the young people in the Dutch study used marijuana once a week or more. (20) Marijuana is readily available through Dutch coffeehouses, which are popular meeting places for young people.

Marijuana use in Alaska appeared to begin much earlier, peaking at age 13-15. (21) Many Alaskans have taken advantage of long summer days to cultivate their own marijuana, thus making available a steady supply. The main benefit for many Alaskans was that it kept money within the local economy. One author indicated that legalization "has not brought debauchery to Alaska." (22)

III. ARGUMENTS ADVANCED IN FAVOR OF THE MEASURE (23)

1. In other states, decriminalization of marijuana has not resulted in increased usage.
2. Fear of arrest or legal prosecution does not deter individuals from using marijuana. Marijuana possession has been illegal in Oregon for many years, yet marijuana is widely available to both children and adults.
3. Laws against marijuana discriminate against a growing class of our society. Those with political power who drink are imposing laws on those without political power who use marijuana.
4. Although marijuana may be harmful to health, as are many foreign substances that are inhaled or ingested, no evidence shows that health risks are unacceptably high. To the contrary, based on evidence available to date, use of alcohol or tobacco appears to be more harmful to health.
5. The penalties for marijuana possession are more severe than for cocaine possession, despite the strong medical evidence that cocaine is very harmful to health. Criminal treatment of marijuana diminishes the impact of warnings about cocaine and other truly dangerous drugs. Also, because alcohol possession is not a crime, the impact of warnings about the dangers of alcohol is diminished.
6. Current marijuana laws are internally inconsistent. They recognize that mere possession of marijuana for personal use should not subject the user to a jail term. Yet it is illegal, generally a major felony, to sell marijuana, to grow it, or to receive it as a gift. It makes far more sense to allow one to grow marijuana for personal use than to force that person to break the law to acquire it.
7. The current laws are extremely arbitrary. The penalty for possessing less than an ounce is the equivalent of a parking ticket. Growing any

amount carries a penalty equivalent to forcible rape or attempted murder. Possessing more than one ounce has heavier penalties than burglarizing a business and stealing its entire inventory. This arbitrariness breeds disrespect for the law.

8. Current marijuana laws are selectively enforced from county to county and from officer to officer. This gives the prosecutor and the police officer too much discretion and likewise breeds disrespect for the law.
9. Law enforcement officials frankly acknowledge that they use the current marijuana laws as a "tool" to arrest people who are suspected of other crimes or wrongdoing that can not be proved in court. This is an inappropriate use of the law.
10. Current marijuana laws give the adult possessor of marijuana little incentive not to distribute the drug to children.
11. If an otherwise law-abiding adult wishes to possess a small amount of marijuana (which is only a violation), that adult must participate in law-breaking to obtain the marijuana, by growing it, buying it, or by receiving the marijuana as a gift. This brings this adult into a chain of law-breaking that may well include organized crime. Under Measure 5, the adult would break no law by simply growing his own supply. Also, by growing his or her own, the adult would not be likely to meet the professional marijuana retailer, who may also try to sell the adult other more dangerous chemicals, such as cocaine.
12. Because marijuana possession is a crime, there is no quality control and the product can be adulterated with dangerous chemicals, such as paraquat.
13. History has demonstrated that if a law is broken by a large minority, and the crime is without a victim, the law should be changed.
14. As to the specifics of Measure 5:
 - (a) Setting an amount by weight is arbitrary. Marijuana quality varies and so do smoking habits. If we wish to decriminalize "personal use" of marijuana, that is what should be done.
 - (b) Measure 5 would not put the State of Oregon in the marijuana business. Under Measure 5, growing and possessing marijuana would be an activity irrelevant to government.
 - (c) Eighteen-year-olds are adults, fully able to vote and make contracts, among other things. No reason exists to discriminate against adults who are 18-21 years old.
15. If Measure 5 has problems, legislative or judicial interpretations will clarify.

IV. ARGUMENTS ADVANCED IN OPPOSITION TO THE MEASURE (24)

1. Current law is working well. As a practical matter, the law against personal use of marijuana is enforced sporadically. Marijuana smokers rarely go to jail.

2. Current law needs to be changed, but Measure 5 is not the way to change the law because:
 - (a) It sets out an awkward "affirmative defense," which could well keep policing costs the same but increase prosecution costs.
 - (b) By allowing adults to possess and grow amounts of marijuana for a "person's own consumption" rather than a set amount, the measure will require extensive judicial and perhaps legislative interpretation. Thus, the law will be unclear for some time.
 - (c) The term "private possession" is unclear and will require interpretation.
 - (d) Oregonians under 21 cannot drink nor should they be able to smoke marijuana. The 18-year-old limit is too young.
 - (e) The measure fails to eradicate the hypocrisy inherent in current law. It is a mere violation to possess a small amount, but it is a serious crime to sell, grow or receive any amount as a gift. Under the measure, one could possess for personal, private use and grow for the same but still could not give, receive, sell or buy any amount. The hypocrisy remains.
4. Although current law may discriminate against marijuana users, as opposed to alcohol users, that is appropriate. Laws are a reflection of the values of society. Although it might be preferable to make alcohol and tobacco illegal, that is not politically feasible. However, it is feasible to maintain the current marijuana laws.
5. Law enforcement officials use the current marijuana laws as a tool to prevent other crimes, such as, the sale of drugs to children. The passage of the measure would remove this tool. Law enforcement officials are almost unanimously opposed to the measure.
6. Educators and representatives of drug abuse agencies are almost unanimously opposed to the measure because they fear that if it is legal to grow marijuana in the home, there will be more marijuana available to children. Intoxication by any substance is not good for people in general, but it is particularly not good for children.
7. If it is legal to grow marijuana, there will be more of it grown. The marijuana plant grows easily - it is a weed. People growing the plant for personal use will have extra, and growers will distribute it to friends and will make casual sales to acquaintances. Under the measure, those gifts and sales will be illegal. Thus, passage of the measure will increase, not decrease, criminal activity.

V. MAJORITY DISCUSSION

A. Impact on Law Enforcement in Oregon

Our research uncovered little data on the probable impact that passage of Measure 5 would have on Oregon law enforcement. However, based on available information, it is likely that some changes will occur.

1. Enforcement

Many Oregonians already believe that enforcement of laws prohibiting possessing or growing of marijuana for personal use is a largely expendable function. There is evidence indicating that at least in the Portland area, law enforcement officials accord low priority to prosecution of possessing and growing marijuana for personal use. Thus, the priorities of law enforcement officials appear to be those of the public. As a result, your Committee believes passage of Measure 5 will have little impact on law enforcement priorities.

2. The Cost of Arrests and Prosecutions

According to one law enforcement witness, the total cost of drug enforcement in Portland would not change if Measure 5 passes. It is likely, however, that the portion of the total drug enforcement budget allocated to searching for marijuana grown for personal consumption will be reduced, thus freeing more resources to spend on investigating the commercial growing and selling of marijuana and enforcing other drug laws.

Proponents and opponents of Measure 5 agree that no data is available on the cost of personal-use prosecutions. If police investigations are reduced, fewer cases will be filed. On the other hand, once a case is filed, additional costs will be incurred by the prosecutor attempting to overcome the "personal-use" defense.

In summary, although actual prosecutions should decrease, the per-prosecution cost should increase. In the absence of other changes, the net effect should be little or no change in total prosecution costs.

3. Attitudes Toward the Law

If one agrees with the proposition that marijuana laws and enforcement policy promote disrespect for law and distrust of law enforcement, then passage of Measure 5 may bring increased confidence in law, law enforcement, and the democratic process. Although no one factor is determinative of the ultimate question, if alienation from and disrespect for law is a serious cost of current marijuana laws and marijuana law enforcement, then reduction of such alienation and disrespect may be a great benefit of passage of Measure 5.

B. Impact on Supply

Throughout history the prohibition of the undesired behavior of a given group of people usually has met with mixed success. The failure of the Volstead Act to prohibit consumption of alcohol led to the creation of powerful crime syndicates to meet the continued demand. If a given group of individuals wishes to engage in a particular behavior or acquire a certain product intensely enough, then that group usually will be willing to pay the accompanying social and economic costs.

Limited and ambiguous data are major problems in drawing conclusions about the availability of marijuana either before or after legalization. Marijuana is a weed that can easily be grown indoors or outdoors. Marijuana has grown wild in many parts of the United States for years, but no reliable statistics exist on total acreage under marijuana cultivation either in the U.S. or Oregon.

The impact of legalization on the supply of marijuana cannot be proven conclusively. Prohibition probably has reduced the total amount of marijuana consumed as well as the total number of users, but that assumption may be spurious. The only statement that we can make with some certainty is that marijuana will continue to be available in Oregon whether or not Measure 5 passes.

C. Legal Issues

1. Judicial

On its face, the proposed law is ambiguous in that it does not define "private possession." As to "private," an analogy is ORS 163.465, which prohibits sexual intercourse (an otherwise lawful act) in or in view of a "public place." A "public place" is one to which the public has general access. (25) To be charged, the defendant must have known he/she could have been seen by the public.

Beyond that ("private" is that which is not "public"), the law is unclear. Search and seizure law addresses a person's right to have a "reasonable expectation of privacy," but that standard is vague, and the case law changes constantly. For example, based on a search and seizure analogy, it is not clear whether Measure 5 prohibits growing a plant in a back yard with a cyclone fence or in a front window. A judge interpreting Measure 5 could follow the ORS 163.465 analogy and be expansive about what is "private," or the judge could look to recent search and seizure law and be restrictive in the interpretation. If the judge looked to the legislative history of Measure 5, which would mean looking at its sponsors' intent, the judge could conclude that "private" means in the home. Does that mean that only the owner or tenant of a residence can smoke, and all guests must do that evening's smoking in their own homes, before they go to the party? (26) The answer is unclear.

2. Legislative

Some states have enacted a so-called "rebuttable presumption." In Maine, for example, if a defendant has more than 1.5 ounces, he or she must prove lack of intent to distribute. If Measure 5 passes, our legislature could enact such a presumption. There are political problems with giving the issue to the legislature. The legislature could undo the passage of Measure 5 by enacting a presumption that possession of more than .001 grams shows intent to distribute. Presumptions must be based in logic, so the court might undo the legislature's enactment.

As to marijuana smoked in a vehicle, the legislature could pass a law modifying the "open container" law, ORS 811.170. Currently, it is a traffic infraction to have an open container of alcohol in a car. The legislature could include in that law marijuana within reach of the passenger compartment.

3. Practical Problems

Measure 5 provides an "affirmative defense," as described in the introduction. Theoretically, an affirmative defense would mean just as many trials but more "not guilty" verdicts. If the law simply were that it is not a crime to possess, e.g., less than 4 ounces, the police officer would weigh the marijuana seized. If it were 3.5 ounces, the officer would not even write a ticket, thus eliminating an arrest, possible pretrial

jailing, a possible court-appointed lawyer, and a twelve-person jury trial. Measure 5, as a practical matter, probably will mean that police will create some sort of policy guideline, maybe 4 ounces. Officers will weigh the marijuana and decide whether to charge.

The language "for the person's own consumption" is fairly clear on its face but brings potential problems of proof. With a large amount (e.g., more than 10 plants, or more than two pounds of dried plant), there is not much of a proof problem. The owner/defendant would testify that it was for his own consumption for the next ten years, and the jury probably would not believe him and would find him guilty. However, with a small amount, it would be a swearing contest. The state would present an expert who would say, for example, that five large plants yield so much, which would make so many marijuana cigarettes, and the average person typically smokes so much, so the defendant could not have been growing merely for personal use. Then the defendant would testify it was for personal use, because he is a heavy smoker but a bad farmer and the plants were weak. The jury could find either way.

VI. MAJORITY CONCLUSIONS

Although the current penalties for growing marijuana strictly for personal use are too severe and some revision in current law may be appropriate, Measure 5 is not the answer.

The definition of "private possession" is ambiguous and subjective and will lead to litigation.

Potential problems exist in proving marijuana is "for the person's own consumption." Creation of an affirmative defense to penalties for possessing or growing small amounts does not eliminate the inconsistency with respect to selling. Also, an affirmative defense would complicate trials.

In addition, because the potential exists for more widespread use in schools if the age limit is 18, the age limit should be 21.

The Majority's opposition to Measure 5 does not indicate general opposition to legalization of marijuana. All members of the Majority see possible merit in government regulation and taxation of commercial growing and selling of marijuana. Although beyond the scope of the Committee's review, that alternative and other ways to revise current law deserve study and consideration.

VII. MAJORITY RECOMMENDATION

The Majority recommends a "No" vote on Measure 5 at the November 4, 1986 general election.

Respectfully submitted,

Kathryn Augustson
Patricia Bedient
Melinda S. Eden
Steve Heck
Richard Roy
Kay Schuknecht and
Richard Lakeman, Chair
FOR THE MAJORITY

VIII. MINORITY DISCUSSION

The Minority adopts the "Majority Discussion."

IX. MINORITY CONCLUSION

Although Measure 5 has some serious deficiencies, most can be solved by legislative enactment or judicial interpretation. Despite the measure's imperfections, it vastly improves present law.

Possession, cultivation, and sale of marijuana have been serious crimes in Oregon for many years. Growing one small marijuana plant has the same penalty as forcible rape or attempted murder.

In reality, a rapist will receive more actual time in prison than a grower of one plant, a reality that does not address the gross disparity in the law. The law should speak articulately and logically. Oregonians consider rape more evil than growing marijuana. When marijuana is defined as a Class "A" felony, the law seems cheap and breeds disrespect.

Notwithstanding the years of prohibition, marijuana is freely available to adults and to children. Virtually everyone knows at least one otherwise law-abiding and respectable person who occasionally smokes marijuana. In 1979, about 20 percent of adults over age 26 reported having used it at least once. (27) In 1972, in Portland, some 30-40 percent of high school students had tried it. (28) Although possession of a small amount is only a violation, everyone who possesses marijuana obtains the drug by purchase or gift (generally a Class "A" felony) or by growing (a Class "A" felony.) The current marijuana laws make otherwise respectable Oregonians liable for conviction of a serious felony, as in prohibition days. Current law makes a serious crime of actions many, many Oregonians take.

Under present law, the otherwise law-abiding citizen who smokes marijuana not only is forced to break the law to obtain his supply, but also may deal with a marijuana retailer who necessarily will be part of a chain of law-breakers, possibly including members of organized crime. Further, the retailer, like any other retailer, may try to expand his market. The marijuana retailer may encourage non-smokers to smoke or encourage smokers to try other products, including more dangerous drugs. If the user simply grew his own supply, he would not have to be a part of a criminal network.

The marijuana laws are enforced erratically throughout the state. Some counties enforce and some virtually ignore possessing or growing small amounts. To ignore the growing of a marijuana plant is to ignore the commission of a Class "A" felony. For the public to tolerate a prosecutor or a police officer ignoring a Class "A" felony (as is true with marijuana) may encourage erratic enforcement of the laws in general or a general disrespect for the law.

The marijuana laws are enforced inconsistently. Law enforcement officials candidly admit that they use possession laws to arrest people suspected of committing unprovable crimes. Also, officials often ignore possession of slightly more than an ounce by an otherwise respectable citizen, an amount the officer or deputy district attorney believes to be for "personal use." Those decisions are left up to the unreviewable discretion of the law enforcement official. This is an inappropriate use of police and prosecutorial discretion.

Present law calls into question the credibility of other drug laws and warnings about the dangers of other drugs, both legal and illegal.

Current law does not discriminate between marijuana possession by a 40-year-old and by a 10-year-old. Measure 5 corrects this omission.

The Minority finds that the most convincing data indicate marijuana is about as dangerous as alcohol. Marijuana prohibition has problems comparable to those seen during the period of alcohol prohibition.

The Minority agrees with the unanimous recommendation of the 1972 City Club report which is that "there be no criminal or legal sanctions for personal use or possession of marijuana."

X. MINORITY RECOMMENDATION

The Minority recommends a "Yes" vote on Measure 5 at the November 4, 1986 general election.

Respectfully submitted,

Heidi Irene Curtis
Laura Graser
FOR THE MINORITY

Approved by the Research Board on September 23, 1986 for transmittal to the Board of Governors. Received by the Board of Governors on October 6, 1986 and ordered published and distributed to the membership for discussion and action on October 31, 1986.

REFERENCES

1. Narcotics dull the senses, relieve pain and induce sleep. The term refers here to any drug, such as marijuana or amphetamines, of which use is restricted by law.
2. "The Forbidden Fruit: A Legal History of Marijuana," Virginia Law Review, 1970.
3. Maine, California, Colorado, Alaska, North Carolina, Mississippi (which provides that it may not be in a vehicle), Nebraska (where the penalty includes mandatory drug education), New York, Ohio, Minnesota. In most of these states, unlike Oregon, over the violation-amount, but still a small amount, is a misdemeanor.
4. Conditional discharge means the offender is placed on probation, and, if he successfully completes probation, the case against him is dismissed and his record is sealed by the court. See e.g. Anno. Laws of Mass. 94C:39.
5. Sources: American Jurisprudence 2nd, Desk Book, Documents, (1985 supp.); "The Marijuana Laws" published by the National Organization for the reform of Marijuana Laws (NORML) (Spring, 1985); the statutes themselves.
6. 21 USC sections 801, et seq.
7. See, Opinion of the Oregon Attorney General, #5948 (1986).

8. Oregon Department of Justice Crime Analysis Center, Oregon Serious Crime Survey, 1985 Update, May, 1986.
9. What amount is for "personal use" varies depending on who is giving an opinion. To generalize, most consider an amount in the 1 oz. to 4 oz. range to be for "personal use" as opposed to for sale.
10. Oregon Serious Crime Survey, 1985 Update, May, 1986.
11. National Research Council, An Analysis of Marijuana Policy, 1982.
12. Law enforcement authorities consulted by your Committee quite candidly stated that current marijuana laws are "a useful tool" to prosecute individuals who the authorities know are committing other crimes which, however, the authorities know they cannot prove in court. Marijuana possession cases are easy to prove in court.
13. Oregon Serious Crime Survey, May, 1986.
14. "Report on Legal Sanctions of Marijuana," City Club of Portland Bulletin, April 14, 1972.
15. Sylbing, Garth, The Use of Drugs, Alcohol and Tobacco, 1983.
16. Johnston, Lloyd D., "Marijuana Use and the Effects of Marijuana Decriminalization," Institute for Social Research, University of Michigan.
17. Survey of Alcohol and Drug Use Among Portland Public School Students, NW Regional Education Laboratory, 1985.
18. Patterns of Drug Use: School Survey, The Center for Alcohol and Addiction Studies, University of Alaska, July, 1983.
19. An Analysis of Marijuana Policy, supra, 1982.
20. The Use of Drugs, Alcohol and Tobacco, Foundation for the Scientific Study of Alcohol and Drug Use.
21. Survey of Alcohol and Drug Use Among Portland Public School Students, 1985.
22. Dunham, Michael, "When the Smoke Clears," Reason, March, 1983.
23. Although an effort was made to include in Sections III and IV all arguments advanced on both sides, the discussion and conclusions sections of this report include only those arguments that Committee members found to be persuasive in arriving at conclusions and recommendations.
24. See footnote 23.
25. ORS 161.015.
26. The August 19, 1986, Attorney General's opinion (OP-5948) opines that OMI does not limit where "personal consumption" could occur. That conclusion is questionable. On its face, OMI deregulates private consumption.

27. An Analysis of Marijuana Policy, supra.
28. "Report on Legal Sanctions of Marijuana," City Club of Portland Bulletin, April 14, 1972.

APPENDIX A
Persons Interviewed

David Kanner, author of proposed Control Act of 1982 (legislation to control and tax marijuana)

Chuck Karl, Lieutenant, Drug Enforcement Unit, Bureau of Police, City of Portland

Fred Kofoed, M.D., Psychiatrist, U.S. Veterans Administration Drug Treatment Center; faculty member, Oregon Health Sciences University, Portland, Oregon

David Moore, M.D., Medical Director, Alcohol Treatment Center, Medical Center Hospital, Portland

Frederick J. Oerther, M.D., Oregon Marijuana Initiative

Paul Phillips, State Representative, Co-Chairman, Citizens Against Marijuana Initiative

Marilyn Richen, Coordinator, Drug and Alcohol Program, Portland Public Schools

Michael E. Rose, Attorney, Oregon Marijuana Initiative

John Sajo, Director, Oregon Marijuana Initiative; Chief Sponsor of Measure 5

Michael D. Schrunk, District Attorney, Multnomah County

Philip Snedecor, M.D., Oregon Governor's Council on Alcohol and Chemical Dependency

Carol Turner, Board Member, Portland Public Schools

Ruth Vandever, Executive Director, Oregon Board of Pharmacy

Robert K. Velander, Director, Oregon Drug and Alcohol Information Center

Spokesmen for 14 drug and/or alcohol treatment centers in the Portland area.

APPENDIX B
Bibliography

- An Evaluation of the Decriminalization of Marijuana in Maine, Office of Alcoholism & Drug Abuse Prevention, Augusta, Maine (1978).
- Carey, James T. The College Drug Scene. Englewood Cliffs, N.J.: Prentice-Hall, 1968.
- Committee on Substance Abuse and Habitual Behavior, National Research Council, An Analysis of Marijuana Policy, National Academy Press, Washington, D.C. (1982).
- Committee to Study the Health-Related Effects of Cannabis and its Derivatives, Marijuana and Health, Institute of Medicine, National Academy Press, Washington, D.C. (1982).
- Dennis, Paul and Carolyn Barry; The Marijuana Catalog. Chicago: Playboy Press, 1978.
- Drug Abuse: A Guide for the Primary Care Physician. American Medical Association: Chicago, 1981.

- Dunham, Michael, "When the Smoke clears," Reason, March, 1983, pp. 33-36.
- Egan, Douglas M., Drug Use by Oregon Public School Students 1985, Office of Alcohol and Drug Abuse Programs, Oregon Department of Human Resources, May 19, 1986.
- Fleming, D. The Complete Guide to Growing Marijuana, San Francisco: Sundance Press, 1970
- Gampel, Joanne C., Social Drug Use in Society (Proceedings of Marijuana and Health-Research Conference, April, 1984), Council on Marijuana and Health: Washington, D.C., 1985.
- Glantz, Meyer D., Research Issues 34: Correlates and Consequences of Marijuana Use, National Institute on Drug Abuse, Rockville, Maryland, 1984.
- Goff, Clinton. The Attitudes of Oregonians about Crime and the Criminal Justice System, Oregon Serious Crime Survey, 1985 Update, Oregon Department of Justice Crime Analysis Center, May, 1986.
- Handbook on Student Responsibilities, Rights and Discipline, Portland Public Schools, 1985.
- Heck, Steve, Printout of computerized literature search for marijuana initiative information, Portland State University, July 18, 1986.
- Herer, Jack, The Emperor Wears No Clothes, Seattle: Queen of Clubs Publishing Co., 1985.
- Johnston, Lloyd D., "Marijuana Use and the Effects of Marijuana Decriminalization." (Testimony delivered at hearings on the effects of marijuana held by the Subcommittee on Criminal Justice, Judiciary Committee, United States Senate, January 16, 1980, Washington, D.C.).
- "Marijuana & Public Health," M.D., Feb. 1983, p. 12.
- Marijuana: A Second Look, Oregon Lung Association.
- Moser, James F. "Discriminatory Practices in Marijuana Arrests: Results from a National Survey of Young Men," Contemporary Drug Problems, Spring 1980, pp. 85-105.
- Neill-Carlton, Patricia, and Joe B. Hansen, A Survey of Alcohol and Drug Use among Portland Public Schools' Students, Northwest Regional Educational Laboratory, Portland, Oregon, September 10, 1985.
- "Report on Legal Sanctions of Marijuana," Portland City Club Bulletin, Vol. 52, No. 48, April 14, 1972.
- Rose, Michael E., Letter to Messrs. Ball, Bradley, Schrunck & Turner, Oregon Marijuana Initiative letterhead, May 8, 1986
- Saltzman, Jules, Marijuana: Current Perspectives, Public Affairs Pamphlet No. 539, Dec. 1984, pp. 9-11.
- Schwartz, Richard H., M.C., "Frequent Marijuana Use in Adolescence," American Family Physician, Jan. 1985, pp. 201-205.

- Sconce, Gary C., "A Summary of Facts on Marijuana," American Educational Materials, Inc., 1986.
- Segal, Bernard, et al, Executive Summary, Patterns of Drug Use: Community Survey, The Center for Alcohol and Addiction Studies, University of Alaska, Anchorage, 1983.
- _____. Executive Summary, Patterns of Drug Use: School Survey, The Center for Alcohol and Addiction Studies, University of Alaska, Anchorage, 1983.
- Suggs, David L. "A Qualitative and Quantitative Analysis of the Impact of Nebraska's Decriminalization of Marijuana," Law and Human Behavior, Vol. 5, No. 1 1981, pp. 45-71.
- Sylbing, Garth, The Use of Drugs, Alcohol and Tobacco (Results of a Survey among Young People in the Netherlands aged 15-24 years), Foundation for the Scientific Study of Alcohol and Drug Use, 1983.
- Table 15, Drug Law Arrests by Type and Activity 1983-1984, Report of Criminal Offenses & Arrests (1984).
- Tilford, Mick, The Economic Impact of Limited Legalization of Marijuana, University of Minnesota, Duluth, 1985 or 1986.
- U.S. Journal of Drug & Alcohol Dependence, August 1986.
- Weil, Andrew, M.D., and Winfred Rose, Chocolate to Morphine, 1983.
- Weller, Ronald A., M.D., and James A. Halikas, M.D., "Marijuana Use and Psychiatric Illness: A Follow-Up Study," American Psychiatric Association, July 1985, pp. 848-850.
- Whitebread, Charles H., II and Richard J. Bonnie, "The Forbidden Fruit: A Legal History of Marijuana," Virginia Law Review 1970, pp. 971-1185.

Report On
"PROHIBITS MANDATORY LOCAL MEASURED TELEPHONE SERVICE
EXCEPT MOBILE PHONE SERVICE"
(State Measure No. 8)

Question: "Shall Public Utility Commissioner be prohibited from requiring local measured telephone service except for land, marine or air mobile service?"

Explanation: "Proposed law prohibits Public Utility Commissioner from requiring telephone customers to pay for local service based upon number, length, distance or time of calls, or combination thereof. Mandatory measured service for land, marine, air mobile phone service or local exchange service resold at a profit is not prohibited. Commissioner may not take action, including local exchange boundary changes, circumventing this Act."

To the Board of Governors,
City Club of Portland:

I. INTRODUCTION

Local Measured Service (LMS) means charging for local telephone service based on the number, length, distance, time of day, or a combination of these, of each telephone call made by a customer. Measured service has been an option for both residential and business customers in some areas in Oregon for several years.

This measure would prohibit the Public Utility Commissioner (PUC) from requiring local measured service (LMS). The measure also would prohibit the change of local service exchange boundaries (1) or any other action that would in effect circumvent the prohibition of local measured service.

The initiative was placed on the ballot through the joint efforts of a coalition of advocate groups representing both residential and business telephone customers. Sponsors of the initiative included the Oregon State Public Interest Research Group (OSPIRG), the National Federation of Independent Business (NFIB) and Oregonians for Affordable Phone Service.

II. BACKGROUND

A. The Concept of Local Measured Service

LMS is a method of charging local telephone service based on a customer's use of local network facilities. Such a billing system is comparable to that used for long distance calling. Local calling charges are more frequently based on a monthly flat fee, rather than on the time and duration of outgoing calls.

LMS has been in effect as an option in Oregon, for both residential and business customers, since about 1979. The statistics cited by Pacific Northwest Bell (PNB) indicate it may be popular with certain users, but not

1. A local service exchange boundary is defined as a local toll-free call area.

all. PNB estimates that approximately 50% of its new business customers choose LMS as an option. Only 12% of new residential customers choose this option.

B. Deregulation and the Emergence of LMS

Universal service is a public policy goal that dates from the Depression. It requires the phone company to provide service to all residential households at the lowest possible cost. For years, long distance and business customers have subsidized low flat rates for residential phones.

Deregulation largely has eliminated the subsidy of local flat rate service by long distance rates. To maintain low residential rates required by universal service, that subsidy must come from somewhere else. The phone companies, such as PNB, believe that part of the solution to maintaining universal service lies with mandatory measured service for business users. In principle, measured service tracks the cost of usage to each consumer. By charging high users full cost, universal service can be offered to residential users at minimal rates.

The alternative scenario, argued by PNB at LMS rate hearings, is one of deteriorating service and increased costs to the consumer. As many businesses seek other telecommunication carriers, essentially bypassing the current system, there will be fewer ratepayers, who, in turn, will pay ever higher costs. These concerns indicate that universal service, as now available, could be limited for some groups and individuals should LMS become mandatory for businesses.

Despite those arguments, there has been no groundswell of support for mandatory LMS. However, there has been well-funded opposition from business and consumer groups. In the face of this opposition, PNB states that it will not pursue mandatory LMS. Nevertheless, the concern remains that universal service will be threatened. Should PNB price its measured service option at less than cost, a migration of customers to that option would be likely. The flat rate would rise and some customers would be unable to afford it.

The 1985 legislature compounded the concerns of those opposed to mandatory LMS by passing HB 2200 (enacted to amend Chapt. 550, ORS 757.005). This bill eliminates rate-making hearings for any telecommunication service when the PUC considers market competition to exist, or the service to be non-essential. According to Public Utility Commissioner Maudlin, the bill was passed to give all phone companies the opportunity to compete. While the bill should not directly affect rates and does not directly bear on the LMS issue, it is a major article of deregulation and gives the PUC increased discretion in setting telephone rates.

C. The LMS Controversy in Oregon

Mandatory LMS became an issue of public interest in July 1983 when PNB filed a proposal with the PUC that would require all business customers to pay for their local telephone services on a measured service basis. (PNB has never requested mandatory LMS for residential customers.) From July 1983 to November 1983 the PUC investigated the PNB proposal and conducted hearings on the proposal. A number of groups became involved in those proceedings, including OSPIRG, the NFIB, and TRACER.

TRACER (Telephone Ratepayers Association for Cost-based and Equitable Rates) is a lobbying organization, consisting of 83 businesses and service industries, including Fred Meyer, Omark Industries, hospitals, local governments, and the Oregon Association of Realtors. TRACER became concerned that the proposal from PNB for mandatory LMS would result in significant cost increases in phone service. TRACER hired experts to analyze the cost information provided by PNB. In the course of rate-setting hearings, TRACER's experts argued that the cost to PNB of a local call was \$.0002 per minute, while PNB claimed its cost was one hundred times higher, or 2 cents per minute.

While both sides agreed that rates should be cost-based, no consensus was reached on what constituted "cost." PNB claimed that the methodology adopted by TRACER's experts did not adequately compensate the utility for development and maintenance of the technology needed to provide phone service. TRACER claimed cost data provided by PNB was incomplete and inadequate to support PNB's rate proposal.

In December 1983, then-Public Utility Commissioner John Lobdell issued an order requiring mandatory LMS for business, with an effective date of July 1984. The order was made contingent upon the completion of a cost-supported rate structure. In the following months, the rate structure was developed and numerous public hearings held to discuss unresolved cost issues. Response to the order was strong and negative. In July 1984, Commissioner Lobdell postponed the implementation date one year to July 1985. The implementation date was postponed again by Commissioner Gene Maudlin (Lobdell's successor) to July 1986.

In November 1985, Commissioner Maudlin rescinded all previous orders imposing mandatory LMS and dismissed all proceedings on the issue. He said he did so because the customers who would have benefited most from mandatory measured service, opposed it. Despite Commissioner Maudlin's rescission of mandatory LMS, at least two of the groups opposed to the plan believed that the issue was not dead. OSPIRG and the NFIB formed a coalition to gather sufficient signatures to place the initiative on the ballot.

Measure 8 takes authority to mandate LMS away from the PUC. The measure, in effect, would leave that authority to the legislature, where groups such as the NFIB believe they have more clout.

Meanwhile, the 1985 legislature assigned the issue of LMS to the Legislative Interim Task Force on Telephone and Telecommunication Services. During the 1985 session, a bill was introduced and passed which created a one-year moratorium on the imposition of business measured service. Since the orders rescinding mandatory business LMS were issued, the legislative task force has been studying universal telephone service and other related topics.

There presently is no organized opposition to Measure 8. PNB has stated publicly that it does not intend to pursue mandatory LMS in the foreseeable future.

III. ARGUMENTS ADVANCED IN FAVOR OF THE MEASURE

1. LMS currently is an option for business and residential customers. A "Yes" vote would preserve the consumer's choice between a monthly flat rate and LMS.

2. If mandatory business LMS is imposed, residential customers may be next. Ultimately, those on low incomes will be unable to afford basic phone service.
3. Mandatory LMS could result in excess profits for the phone companies and could allow them to direct those profits into other areas where there is not now strong market competition. Predatory pricing could lead to monopolistic control of services that now are deregulated.
4. Mandatory LMS would increase costs for many service industries, government agencies and non-profit firms.
5. For many businesses, mandatory LMS could make phone bills -- often a major operating expense -- uncertain.
6. PNB cost data fails to establish a link between usage and cost. Until that link is established, mandatory LMS appears to be simply a revenue-enhancing strategy.
7. The PUC issued orders to implement LMS without adequate cost data. The subsequent decision to rescind was not based on the merits of LMS, but because of rate-payer resistance. This measure would remove the issue from the PUC's authority.
8. Should mandatory LMS be advocated in the future, the measure ensures that it would be debated in the legislature, a better forum for discussing public policy issues.

IV. ARGUMENTS ADVANCED AGAINST THE MEASURE

1. This measure would not prohibit mandatory LMS. The legislature still could impose mandatory LMS and refer the actual rate-making process back to the PUC.
2. The legislature may lack the technical expertise to determine whether mandatory LMS is a cost-effective method for billing consumers. The legislature is more vulnerable to political pressure than is the PUC.
3. Proponents of the measure are concerned about the rate-making process. If that is the case, then the initiative is an inappropriate and piecemeal way to address a more serious problem.
4. The rate-making process of the PUC may change if Ballot Measure No. 4 passes in November, changing Oregon's PUC structure to a three-person commission.
5. If the object of the measure is to control or to simply embarrass the incumbent Commissioner, the issue may be moot because both gubernatorial candidates have stated that the incumbent will be replaced.
6. Because the measure is so narrow in its effect, it is possible that OSPIRG may have a hidden agenda of its own; i.e., the undermining of investor-owned utilities in favor of public utilities.
7. Mandatory LMS may be more equitable in the long run, but the benefits are difficult to demonstrate.

V. DISCUSSION

A. Introduction

A proposal such as LMS must be evaluated by persons with expertise and background in utility rate issues. Any proposed rate change must be considered in light of criteria developed by the legislature and other rate-making authorities. The PUC office has been developed expressly to make such decisions.

Your Committee questions whether it is appropriate to take a decision on a single rate-making issue and, by ballot measure, transfer that single decision from the PUC to the legislature. Further, the PUC has rescinded its order mandating LMS for business users and PNB has stated it will not pursue mandatory LMS. This measure is so narrow in effect, that your Committee believes its proponents may well have a hidden agenda in bringing this issue before the public at this time.

The role of current and past Public Utility Commissioners is a topic of ongoing controversy. Your Committee necessarily scrutinized the PUC's actions with respect to LMS, but went no further in evaluating the performance or competence of the PUC or his staff.

Most sources agreed that rates should have a basis in cost and further agreed that costs increased with usage. However, there was no consensus among the experts on whether incremental cost increases caused by heavy usage were significant. Your Committee found it difficult, as lay people, to evaluate the merits of local measured service as an alternative to flat rate charges. The concept of "universal service" or whether and to what extent business customers subsidize residential rate payers, issues not addressed by your Committee, tend to complicate the issue.

Several factors were cited by those groups advocating passage of the ballot measure. They include: 1) a fear that LMS would increase costs for some businesses, non-profit organizations and disadvantaged individuals (i.e., the elderly, frail, etc.); 2) the importance of predictable rates to business and community organizations for planning purposes; 3) the concern that existing cost studies do not reflect accurately the relationship between cost and phone usage.

B. Legislative Capacity to Evaluate the LMS Issue.

Some groups, such as OSPERG and the NFIB, contend that the PUC is susceptible to too much influence by the utilities. By passing this ballot measure, the voters effectively would place control over this issue in the hands of the legislature, where the proponents say the concerns of all parties could better be heard. However, Measure 8 is a statutory amendment, not a constitutional one. A constitutional amendment could be much more effective in permanently prohibiting mandatory LMS. A statute can be overridden by the legislature.

By referring the LMS issue to the legislature, the voters would be placing the decision-making authority over very technical matters in the control of a political body. To handle this issue responsibly, the legislature would need to duplicate the expert staff resources that the PUC already has.

Any legislative decisions unavoidably are "politicized." Your Committee is concerned that it is not in the public interest to debate technology in the legislative setting. The responsibility and authority of the legislature should be to establish public policies and programs, and the mechanisms for administering them. Agencies or commissions with appropriate technical resources should be established apart from the legislature to administer those policies.

The PUC currently has a process allowing for both public and technical input into its decision making. With regard to LMS, the process worked. In fact, those groups sponsoring this measure achieved the result they wanted from the PUC. Mandatory LMS was proposed, approved after much interchange between affected parties, but ultimately dropped as an option in response to a number of unresolved questions and dissatisfaction with the decision.

In fact, the effect of this law might merely be to have the legislature decide that mandatory LMS was good public policy and then delegate the actual rate-making authority, once again, to the PUC. An unnecessary layer of government would be added, with no corresponding benefit.

C. The Rate Making Process and the LMS Issue

The consensus of persons interviewed by your Committee, with the exception of telephone company representatives, is that the Public Utility Commissioner approved mandatory LMS with inadequate cost data. They argued that his decision was arbitrary and capricious. They believe that the legislature should be given jurisdiction of the issue because the commissioner was unwilling to authorize and analyze necessary cost studies. They maintain that the public cannot depend on passage of Measure 4 (creation of a three-member PUC) or the appointee of a new governor to insure that mandatory LMS is never imposed.

On the other hand, the opponents of LMS got what they wanted from the PUC; the order rescinding mandatory LMS was a direct result of the hearings process. Opponents of mandatory LMS were able to present lengthy testimony. During the hearings, the PUC office went so far as to adopt the methodology urged by TRACER's experts to evaluate PNB's rate request. The effect of the testimony was that the order was rescinded.

The management style of the PUC has been criticized and it may have interfered with the rate-making process. But if that process is flawed, as proponents of the ballot measure contend, then the process should be reviewed for possible changes. This measure does not address structural rate-making changes.

If the problem is the PUC, then controlling the PUC's authority on a single rate-making action such as LMS addresses a symptom of that problem only. The PUC has been delegated broad authority by the legislature. The PUC's role is to consider a full range of rate-making possibilities as technology in the telecommunications industry changes and adapts to new demands.

It appears certain there will be a new PUC beginning in 1987. Both candidates for governor have stated publicly that they will replace the incumbent. Moreover, Measure 4, if passed, would create a three-member commission.

D. The Relationship Between Cost and Usage

The merits of local measured service hinge on whether or not there is a significant relationship between increased phone usage and costs to the phone company. The two principal elements of the local telephone system are: 1) access lines dedicated to the exclusive use of individual customers, and 2) switching and transmission facilities provided as a common pool of resources, available to all customers on an as-needed basis. The costs of local telephone service can be divided between these two elements. The line cost is fixed and reflects the cost of providing the access line from a customer to a central office exchange. Call switching is the process of transferring local calls between exchanges (identified by the 2-digit prefix in a phone number). There may be one or several exchanges within a local call area. The costs of call switching vary with the number and duration of calls. Circuit costs (the costs of providing service over cable or radio) also vary, depending on volume, duration and distance of calls.

The telephone company contends that while the cost of the access line does not vary with use, the cost of switching and transmission does vary with demand, making it sensitive to usage or traffic. There is agreement that the cost of providing a dedicated line remains constant, regardless of usage, and that level and time of usage is a cost variable. However, it remains to be resolved just what proportion of the total cost each of those elements contributes.

In addition, a standard accounting system for local phone service has not been developed. This puts the phone company at a disadvantage when attempting to make the case for restructuring rates into an LMS schedule. If such a system could be established, the phone company argues that it would have a greater opportunity to demonstrate the equity of LMS.

Opponents of LMS argue that the cost of the access lines remains constant, regardless of the level of use. There is only begrudging agreement that customers, in theory, should pay for what they use.

There are a myriad of theories on how to calculate the actual cost of local telephone service. Unfortunately, there is a notable lack of consensus among experts regarding any one of those theories. Simply stated, PNB claims that the cost of providing an access line is not great in comparison to the user-sensitive service of switching and transmission. Therefore, PNB insists that it is fair to bill customers for actual usage.

However, private studies commissioned by TRACER questioned the accuracy of PNB analyses of costs, claiming that the switching services account for as little as 10% of total costs for local service. A study commissioned by PNB agreed that LMS made sense theoretically, but noted that there is no standard accounting system in the phone industry. Therefore, there was no way to determine whether or not charges in LMS plans reflect actual costs. There is documentation that the cost of implementing, or administering, a mandatory LMS system will far outstrip any benefits of such a plan. The study in question looked at costs for a small rural phone company. PNB disputes the validity of its analysis.

The General Accounting office has criticized the Federal Communications Commission (FCC) for not developing the principles of accounting that should be used to sort out costs in the phone industry. The FCC currently is researching methods of revising telephone company accounting procedures.

The merits of the cost-usage relationship remain unresolved. The Committee lacked the expertise to evaluate the competing claims.

E. The Impact of Mandatory LMS on Business

The stated objective of mandatory LMS is to restructure pricing policies to achieve a cost-based billing system. PNB argues that LMS is not intended to generate additional revenue, but to reallocate the sources of revenue with high-usage organizations paying proportionately higher phone bills. PNB states that under the proposed mandatory LMS plan, 34% of non-residential customers would have lower bills, 28% would see a change of plus/minus 5%, and the remaining 38% would have higher bills.

Organizations and businesses whose phone rates would increase include: hospitals, 30%; newspapers, 21.75%; and state and local governments, 19.35%. The increased costs presumably would be passed on to their consumers.

Non-profit organizations traditionally rely heavily on the telephone for fund-raising activities, yet the PUC made no allowance for any exemptions. Financial institutions, realtors, companies whose business involves a great deal of data transmission, and those who depend on the telephone for marketing activities all would see higher phone bills as a result of mandatory LMS.

As part of the industry's calculated plan to insure universal phone service, business traditionally has paid higher rates in order to subsidize below-cost residential rates. Mandatory LMS singles out heavy phone users to pay an even greater proportion of the revenue pie. PNB claims that heavy users should pay for the actual costs of their service. However, there is no consensus as to PNB's actual cost of providing that service. Opponents of mandatory LMS argue that LMS is really a usage-based pricing plan rather than a cost-based plan.

At the heart of the mandatory LMS debate is the matter of determining cost as capacity versus cost as usage. PNB's figures to the contrary, detractors of mandatory LMS claim that the incremental costs associated with usage are so insignificant as to render a mandatory LMS plan illogical. The cost of measuring usage would outweigh any revenue gains. If this is the case, it seems unfair that high-volume users should subsidize service for others in the system.

F. Why is Mandatory LMS Still an Issue?

There is no organized opposition to this ballot measure. The phone company is on record that it has no intent to pursue mandatory LMS in the foreseeable future. The incumbent PUC will not impose it, although his remaining tenure may be brief. TRACER, the lobbying group supported by heavy corporate users of phone service, considers mandatory LMS "...a 1983 issue." Its efforts now are focused on new regulatory issues that may affect its members. TRACER dropped its support of the initiative last November when the PUC rescinded the order mandating LMS.

Nevertheless, OSPIRG and NFIB persisted in placing this initiative on the ballot. Although the two organizations make for strange bedfellows, both fear the phone company has a hidden agenda. They cite AT&T documents, drawn up prior to the phone company break up, pointing to mandatory LMS as

a key component for ultimate revenue enhancement. OSPIRG claims residential customers will be the next victim of mandatory LMS.

While the proclaimed intent of the ballot measure is to prohibit mandatory LMS for both residential and business customers, mandatory LMS for residential customers never has been proposed in Oregon. The orders issued by Commissioners Lobdell and Maudlin were mandatory for business customers only. Further, as proposed, mandatory LMS was to be revenue neutral. It merely would shift costs to heavy users. PNB claimed nearly two-thirds of its customers would realize savings.

Your Committee wonders if it is not OSPIRG that has a hidden agenda. OSPIRG maintains income and membership by defending consumers from monopolistic practices of big business and the utilities. OSPIRG has waged many successful campaigns against investor-owned utilities in the past. This initiative may be little more than fuel to keep the fire stoked.

VI. CONCLUSION

Measure 8 intends to prohibit mandatory Local Measured Service. However, Measure 8 does not address the merits of mandatory LMS. It merely shifts the forum for setting LMS rates from the PUC to the legislature. The legislature still could authorize mandatory LMS at some later date, and refer the rate-making task to the PUC. Therefore, the only effect of passage would be to limit the authority of the Public Utility Commissioner regarding a single, specific rate-making activity. If there are legitimate concerns regarding the PUC's rate-making authority, or the rate-making process, your Committee believes there are better ways than this initiative to ensure overall fairness.

VII. RECOMMENDATION

Your Committee urges a "No" vote on Ballot Measure No. 8 on the November 4, 1986 general election ballot.

Respectfully submitted,

Gregory Englund
Kristi Halvorson
Margaret Mahoney
Phyllis Proppe
Ann Quebedeaux
Betsy Skloot
Katy Smith
Sheryl M. Warren
Barton Delacy, Chair

Approved by the Research Board* September 30, 1986 for transmittal to the Board of Governors. Received by the Board of Governors* on October 6, 1986 and ordered published and distributed to the membership for discussion and action on October 31, 1986.

* Research Board members Susan Graber and Christine Kitchel and Board of Governors member Charlie Hinkle, whose firm represents the parent company of Pacific Northwest Bell, abstained from voting on this report.

Appendix A

PERSONS INTERVIEWED

Jim Bernau, State Director, National Federation of Independent Businesses
 Mark S. Dodson, Attorney, Telephone Ratepayers for Cost-Based and Equitable Rates (TRACER)
 Frank Figg, Governmental and Community Affairs Director, GTE
 Cliff R. Forbes, Division Manager, Pacific Northwest Bell (Seattle, Washington)
 Jack L. Landau, Attorney, Telephone Ratepayers for Cost-Based and Equitable Rates (TRACER)
 Gene Maudlin, Oregon Public Utility Commissioner
 Theresa McHugh, Research Analyst, Oregon Legislature
 Esther A. Nelson, Director, Community Affairs - Oregon, Pacific Northwest Bell
 Eric Stachon, Oregon State Public Interest Research Group (OSPIRG)

Appendix B

BIBLIOGRAPHY

Published Articles

Crew and Hammelman, Local Measured Service Assumes A New Role, TELEPHONY, April 16, 1984, pp. 61, 63-64, 69, 70.
 Hill, Robert L., "Letting Loose the Reins," Oregon Business, March, 1986.
 Hill, Robert L., "What Next?" Oregon Business, February, 1986.
 Ota, Alan K., "Phone-Fee Foes File Signatures," The Oregonian, June 26, 1986.
 Richardson, Lee, "The Case Against Local Measured Service," Rural Telecommunications, Winter, 1982.
 Stachon, Eric, "Measured Service Remains a Threat," The Oregonian, December 11, 1985.
 Sadler, Russell, "Measured Rate Issue Not So Simple," (editorial) The Oregonian, September 15, 1986.

Reports

Archer, Choate and Littrell, Telephone Costs and Business Development in Oregon: A Regulatory Perspective, Prepared for the Oregon Public Utility Commissioner, February, 1985.
 Dodson and Landau, "TRACER: BACKGROUND INFORMATION" (undated)
 Dodson and Landau, Work Paper on Local Measured Service, 1985.
 Information Packet to accompanying presentation, Business Measured Service Public Information Meeting, Public Utility Commissioner of Oregon, June, 1984.

Pacific Northwest Bell's Position on Measured Telephone Service, Pacific Northwest Bell (undated).

Park and Mitchell, Optional Peak-Load Pricing for Local Telephone Calls, The Rand Corporation, June, 1986.

Primer on Network and Costs, Pacific Northwest Bell (undated).

Telecom Ratepayers Report, May 31, 1986, p. 10.

PUC Orders

Order In the Matter of the Revised Tariff Schedules for Telephone Service in the State of Oregon, filed by Pacific Northwest Bell, Before the Public Utility Commissioner of Oregon, Order No. 83-505, August 16, 1983.

Order In the Matter of the Revised Tariff Schedules for Telephone Service in the State of Oregon, filed by Pacific Northwest Bell Telephone Company, Before the Public Utility Commissioner of Oregon, Order No. 83-835, December 21, 1983.

Order In the Matter of the Investigation into the Implementation of Cost-Based Business Measured Telephone Services on the Commissioner's own Motion, Before the Public Utility Commissioner of Oregon, Order No. 84-442, June 12, 1984.

Order In the Matter of the Intervention (sic) into the Implementation of Cost-Based Business Measured Telephone Services on the Commissioner's own Motion, Before the Public Utility Commissioner of Oregon, Order No. 84-531, July 12, 1984.

Order In the Matter of the Investigation into the Implementation of Cost-Based Business Measured Telephone Services on the Commissioner's own Motion, Before the Public Utility Commissioner of Oregon, Order No. 85-593, June 27, 1985.

Order In the Matter of the Investigation into the Implementation of Cost-Based Business Measure Telephone Services on the Commissioner's own Motion, Before the Public Utility Commissioner of Oregon, Order No. 85-1070, November 7, 1985.

Miscellaneous

The Impact of Changes in the Telecommunications Industry on Small Business, A Report of the Committee on Small Business House of Representatives, Ninety-Eighth Congress (December 10, 1984) pp. 30-34.

NOTES

Report on
"PHASES OUT NUCLEAR WEAPONS MANUFACTURE WITH TAX CREDITS, CIVIL PENALTY"
(State Measure No. 16)

Question: "Shall nuclear weapons manufacturers changing to consumer production receive tax credits, nuclear weapons production subjected to civil penalty starting 1990?"

Explanation: "Proposed law creates tax credits for businesses retraining employees or making capital investments to change from making nuclear weapons or parts to making consumer products. Tax credit is the lesser of 30% of the certified conversion costs or all tax liability for three successive years. Manufacture of nuclear weapons or parts prohibited and subject to civil penalty (maximum \$5,000 per day) beginning 1990, but contracts in effect before this Act passes could be completed."

To the Board of Governors,
City Club of Portland:

I. HISTORY & BACKGROUND

A. History

Measure 16 is the most recent development in a grass roots movement that has sought support from local and state governments through enactment of resolutions and memorials urging an end to the arms race. It is the first measure of its kind to be submitted to voters anywhere in the United States.

During the 1985 Oregon legislative session, several nuclear freeze and disarmament groups promoted bills to continue the discussion and focus debate on the arms race. House Bill 2722, introduced by Representative Wayne H. Fawbush (D-Hood River) would have taxed profits on the production of nuclear weapons and components. The bill was passed to the floor by the House Revenue Committee and was defeated by a vote of 21-38 on May 22, 1985.

Measure 16, now before the voters, is another attempt by petitioners to generate pressure on the federal government to move away from the nuclear arms race. It is based on House Bill 2722, and Representative Fawbush is among the chief petitioners. The Voters' Pamphlet contains four statements in favor of the measure and none against. Six organizations endorse the measure: Physicians for Social Responsibility, Ecumenical Ministries of Oregon, United Methodist Church, Portland Freeze Coalition, Forelaws on Board, and Generations for Peace.

B. How the Measure Works

Measure 16 would establish a state policy of conversion from manufacturing nuclear weapons or weapons components to manufacturing consumer products. The measure would eliminate manufacture of nuclear weapons and components in Oregon in two phases. It would offer a tax credit for conversion before 1990, and it would impose a prohibition thereafter.

The tax credit would subsidize up to 30% of the costs of converting to production of "consumer products," which is not defined in the measure but is intended by the sponsors to mean nonmilitary production. The credit would be administered by a Governor's Task Force on Nuclear Weapons Conversion, which would consist of nine members. The Task Force members would be appointed on enactment of the Measure and would be retired in 1991. It would be unlawful knowingly to manufacture nuclear weapons or their components after 1990. This prohibition would be enforced by civil penalties and by private suits which could be brought by any individual. A successful private litigant would be entitled to recover legal costs.

The measure calls into question the possibility of conflict with several provisions of the United States Constitution.

C. Constitutional Restrictions

The United States Constitution grants war and national defense powers to the Congress and denies certain war and foreign policy powers to the states.

The Commerce Clause of the United States Constitution prevents states from interfering with interstate commerce. However, state regulation of health and safety is consistent with the Commerce Clause.

Under the United States Constitution, federal law preempts inconsistent state laws. The main federal statute that might have a preemptive effect is the Defense Production Act of 1950. Section 2 of that Act provides:

"In order to insure productive capacity in the event of such an attack on the United States, it is the policy of the Congress to encourage the geographical dispersal of the industrial facilities of the United States in the interest of the national defense, and to discourage the concentration of such productive facilities within limited geographical areas which are vulnerable to attack by an enemy of the United States".
(1)

That Act also authorizes the president to require that defense contracts take priority over any other contract. (2) Federal Regulations have established a system of priority rating. (3) Rated orders must be given preferential treatment. Nuclear weapons components are normally procured through rated orders.

D. Oregon Impact

Oregon's share of the national defense budget is miniscule, and the direct impact of Measure 16 on the Oregon economy would be very slight. In fiscal 1985, military spending in Oregon (on prime contracts over \$10,000) totaled \$260.9 million, but most of this is non-nuclear and not affected by the measure. The measure, if currently applicable, would affect 15 Oregon jobs and contracts amounting to \$477,000, according to proponents.

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1. 15 United States Code, Appendix section 2062.
 2. 50 United States Code, Appendix section 2071(a)(1).
 3. 15 Code of Federal Regulations part 350.

Industry officials who testified before your Committee (representing Oeco Corp., Precision Castparts, and Associated Oregon Industries) did not dispute these figures. However, they expressed serious concern about the measure's constitutionality (see Legal Restrictions, above) and its impact on Oregon's business climate. According to the state Economic Development Department, business location decisions are idiosyncratic and hard to predict. However, in a City Club study on factors influencing regional location choices of high technology companies, 49 percent of respondents rated "regional regulatory practices" as "significant" or "very significant." Further, in answer to a question in the same study on factors influencing location choices within regions, "community attitudes toward business" were rated "significant" or "very significant" by 81.9 percent. (4)

II. ARGUMENTS ADVANCED IN FAVOR OF AND AGAINST THE MEASURE

The following arguments, advanced by various opponents and proponents of the measure, were juxtaposed by your Committee because they appeared to present opposing viewpoints on the designated issues. Although an effort was made to include in this section all arguments advanced on both sides, the discussions in Section III, IV and VII of this report include only those arguments that Committee members found to be persuasive in arriving at conclusions and recommendations.

ARGUMENTS IN FAVOR

1. National Debate. Passage of the Measure will promote public debate nationally. Citizens should be heard on issues of global politics, including production of nuclear weapons.

2. Compensation. The Measure would compensate by tax credit any business forced by law to invest in converting from nuclear weaponry components to consumer goods.

3. Non-Nuclear Military Production. The Measure prohibits manufacture only of parts that are designed specifically and exclusively for use in nuclear weapons. It would not affect any other military contracts or defense spending.

4. Enforcement. The enforcement mechanisms are carefully crafted and fair. The Measure would allow completion of all current government contracts.

ARGUMENTS AGAINST

1. National Debate. Nuclear weapons manufacture is a national policy issue, and should, therefore, be decided at the national level.

2. Compensation. Compensation for converting to consumer goods manufacture covers only 30% of costs and is provided only to the company directly involved, not to its suppliers.

3. Non-Nuclear Military Production. The measure could prove unenforceable due to the difficulty of distinguishing between nuclear components and conventional components, because federal security regulations prevent divulging the intended use of a particular piece of equipment.

4. Enforcement. The private suits that could be brought by any individual might be nuisance suits which would cost plaintiffs little to file but would be expensive to defend.

4. "Report on High Technology Industry-Education Cooperation," City Club of Portland Bulletin, Vol. 63, No. 53, May 19, 1983.

5. Unilateral Disarmament. The Measure is not part of any movement toward unilateral disarmament, and it would not necessarily lead to this result.

6. Oregon Production. No current jobs would be eliminated. Eliminating nuclear weaponry component production eventually would affect only an estimated 15 jobs, which would be transferred via the conversion process to consumer production.

7. Business Climate. The measure would not adversely affect business decisions to locate in Oregon. In fact, it would enhance Oregon's reputation for liveability.

8. Oregon Economy. The measure would strengthen Oregon's economy by relying on peace-based production, which tends to be more stable than military production.

9. Budget Impact. The tax credit incentive would be a negligible factor in the state budget. No additional taxes would be needed.

10. Constitutionality. The Measure is constitutional since the state has the authority to protect the health and welfare of its citizens. It is not preempted by the vague policy statements of federal defense procurement statutes.

11. Impact on Federal Policy. The measure would send a strong message to the federal government that Oregon is against the production of nuclear weaponry.

5. Unilateral Disarmament. Passage of the Measure could lead other states to take similar action, taking the U.S. out of nuclear weapons manufacture; the existing nuclear arsenal will deteriorate to uselessness. This is equivalent to unilateral nuclear disarmament.

6. Oregon Production. There are no nuclear materials or nuclear weapons produced in Oregon, only components consisting of non-radioactive materials; therefore the measure is misleading.

7. Business Climate. Companies considering expansion in, or a move to, Oregon will react to a perceived negative attitude toward business activity, seriously damaging an already depressed business climate.

8. Oregon Economy. Dropping nuclear weapons manufacture does not diversify the economy; it narrows it. Companies already produce any consumer product for which they perceive a viable market.

9. Budget Impact. Passage of the Measure will put Oregon taxpayers to the expense of defending against a court challenge to its constitutionality. Companies affected by the measure have stated their intent to raise such a challenge if the measure passes.

10. Constitutionality. The Measure would be unconstitutional and preempted by the federal defense procurement statute and regulations.

11. Impact on Federal Policy. Because the U.S. can continue nuclear weapons manufacture in other states or at federal facilities, the measure will not accomplish the goal of stopping the nuclear confrontation.

12. International Tensions. Creating an inventory of weapons not intended for use is economically unsound and militarily dangerous. The measure could help reduce international tensions and avoid nuclear war.

13. Specificity. The Task Force created by the measure can more effectively resolve questions as they arise than would a more specific wording that would preclude flexibility in dealing with specific problems.

12. International Tensions. Existence of nuclear weapons provides a major deterrent to large-scale conventional war because both sides fear that such a war would escalate into the ultimate nuclear holocaust. Therefore, nuclear weapons should not be eliminated until other conditions, such as trade agreements that would substantially reduce international hostilities have been established.

13. Specificity. The absence of any definition in the measure of terms such as "consumer products" and "conversion" renders the measure so vague that it will prove impossible to implement.

III. GENERAL DISCUSSION

A. Message Issues

All witnesses agree on the necessity of reducing the threat of nuclear war and of promoting world peace. They also acknowledge that the measure's immediate impact on the probability of achieving these large-scale goals would be minimal.

The issue, therefore, is not the direct impact of the measure itself but rather the message its passage would convey to the rest of the nation and perhaps to the world. Proponents see the measure as a symbolic statement that citizens are opposed to the current buildup of nuclear weapons and to the horrendous threat it entails. Opponents see it as conveying to businesses that might consider locating in Oregon a discouraging picture of Oregon's receptivity to new industry. Both of these imputed impacts are hard to quantify.

B. Legal Questions

All witnesses agree that a state may regulate its industries in order to promote its economy and to protect the health and safety of its citizens. They also agree that a state does not have the right to determine national defense or foreign policies, which are properly the business of the federal government.

Proponents argue that the measure does not impede the federal government's production of nuclear weapons and does not dictate foreign policy. They argue that this measure, if passed, would yield to federal

5. Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Commission, 461 US 190, 103 Sct 1713, 75 L ed 2d 752 (1983).

6. Arthur D. Little, Inc. v. Commissioner of Health and Hospitals of Cambridge, 395 Mass. 535, 481 NE 2d 441 (1985).

law in time of declared national emergency, is not preempted by federal law, and does not violate the Commerce Clause. As precedents indicating the measure would survive a legal challenge, they cite a United States Supreme Court case (5) that allowed California to regulate the siting of nuclear plants and a Massachusetts case (6) that allowed the City of Cambridge to prohibit production of chemical warfare agents. Proponents argue that the enforcement mechanisms bend over backwards to be fair to those companies that choose to convert.

Opponents argue that the measure is preempted by the Defense Production Act of 1950, and that it also violates the Commerce Clause because it is not a health and safety or economic regulation. Further, they anticipate problems in enforcing the measure, because companies often do not know when a component they manufacture is destined for nuclear weapons.

Both sides acknowledge that legal questions must be tested in court. Since the outcome of a legal challenge is hard to predict, neither the Majority nor the Minority of your Committee believes that a citizen's vote on this measure should turn on questions about its legality.

C. War and Peace

The measure opposes nuclear war and the potential loss of human life. Reducing the threat of nuclear war will require real reductions in the arms races, both nuclear and conventional. At issue here is the method of accomplishing those goals.

IV. MAJORITY DISCUSSION

In the opinion of the Majority, evidence presented did not support the claim that any reduction of nuclear arms resulting from passage of this measure would reduce substantially the probability of nuclear war. Inasmuch as the United States Constitution assigns responsibility for both international relations and national defense to the federal government, an initiative primarily directed toward war-and-peace issues would most likely be beyond the purview of state legislation. Therefore, to support the measure, it must be shown to improve Oregon's economy or the health of Oregonians.

Concerning the economy, the Majority of your Committee believes the measure will be more likely to have a negative impact than a positive one:

1. Employment in the production of military equipment in general may or may not be more unstable than employment in other types of industry. The issue is whether the non-production of nuclear weapon components in Oregon would make the state's economy more stable. With only 15 jobs directly involved, the argument has no force.
2. The economic impact could, however, be substantially greater than proponents estimate, since no figures are available showing the Measure's impact on suppliers and subcontractors. The workers no longer spending their wages on goods and services would further depress the economy.
3. A study by MacKenzie and Associates, cited by proponents, purports to examine the implications of a phase-out of nuclear weapon manufacturing in Oregon. The study's tone, however, reflects its strong bias in favor of Measure 16, which it calls "a message from the people

of Oregon about their commitment to allowing the undreamed dreams of future generations." In light of this bias, combined with the acknowledgement in the study itself that available data are incomplete and misleading, the Majority of your Committee is skeptical about the ability of the organization conducting the study to resolve ambiguities objectively.

4. Some half a dozen companies would be affected by the measure, and these companies admittedly could shift their workers to other types of production. However, such a regulatory requirement could discourage the expansion of present Oregon industries and the location of new industries in Oregon. The measure, therefore, could have a negative impact upon the state's already severely depressed economy. The argument that decisions to locate are based upon more tangible factors is not persuasive to the Majority of your Committee, in view of the City Club study cited in Section I, D of this report. In spite of our vaunted livability, our past poor business attitude has contributed to Oregon's recovery lagging behind other states. When Oregon rescinded the unitary tax, we immediately gained jobs. It is clear that perceived business attitudes influence business siting.

The health of Oregonians would not be improved by passage of this measure. Because only components are produced, workers involved are not exposed to radiation. A brochure supporting the measure states "most Oregonians favor restricting the production and disposal of radioactive wastes here . . . [T]his measure would take another step in that direction by stopping the production of raw materials used in nuclear weapons, whose by-products are radioactive wastes." It should be noted that the second quotation implies that the measure would stop the production and disposal of radioactive wastes here. Because there is and has been none to stop, the argument is specious.

The measure also has inherent problems of enforcement. One concern is that manufacturers themselves often do not know whether a particular product is to be used in a nuclear weapon or elsewhere, and they do not expect to be told. Another concern is that the measure would permit (perhaps even encourage) private law suits from individuals, which could be costly to defend, even if apparently frivolous. Even to provide information to prospective litigants, with no requirement that they have legal standing, could involve considerable time and expense for companies affected by the measure. The possibility of being faced with a series of "nuisance" suits is a further deterrent to businesses considering locating in Oregon.

The measure's lack of specificity with regard to definition of "consumer products" and "conversion" could lead to a number of unforeseen problems for affected companies. For example, a company might be able to convert fairly easily from manufacture of nuclear components to non-nuclear military production, but costs of this conversion would not be compensated. Conversion to totally different types of products that would qualify without question as "consumer products" could require some companies to build entire new plants. If the measure would enable those companies to claim tax credits for 30% of the cost of such major conversions up to the total amount of their tax liabilities for a three-year period, its impact on the State's General Fund would be considerably higher than proponents anticipate.

The Majority of your Committee considers the uncertainties regarding the effects of conversion requirements, and the uncertainty as to constitutionality, to be serious flaws in the measure.

The measure could well prove unenforceable or have almost no impact because only a handful of products could be positively identified as nuclear weapons components. Therefore, the Majority believes it would be awaste of state resources to set up the enforcement mechanism prescribed by the bill, and to put taxpayers to the expense of defending its constitutionality.

If the measure cannot be enforced, the message sent to the federal government and to other states contemplating similar action will be without impact. In that case, there could be substantial economic sacrifices imposed on Oregonians for the sake of sending an ineffectual message to the rest of the nation and the world.

V. MAJORITY CONCLUSION

The Majority believes there is serious question as to whether the measure can, in fact, have any significant impact on the threat of nuclear war. We find the measure ambiguous with regard to its constitutionality and with regard to what would be required of companies directly affected. Depending on how these ambiguities are resolved, the cost to the state General Fund could prove very much greater than proponents anticipate. Given these uncertainties and the lack of sound evidence that it can effectively carry out the proponents' intent of reducing the possibility of nuclear war, and to the contrary, could promote conventional war, the Majority finds the measure's potential negative effect on Oregon's already depressed business climate to be too high a price to pay for the opportunity to make a symbolic gesture.

VI. MAJORITY RECOMMENDATION

The Majority recommends a "No" vote on Ballot Measure 16.

Respectfully submitted,

Clarence Hilbrick
Ronald Iverson
Philip Spiers
Thomas Stimmel
C. Norman Winningstad
B. J. Seymour, Chair
FOR THE MAJORITY

VII. MINORITY DISCUSSION

The measure should be adopted if it has any tendency whatsoever to lessen the chance of nuclear war. The Minority believes the measure would have this tendency. The strategic analyst who testified before the Committee said that the number of nuclear weapons the United States and the Soviet Union now have far exceeds the number needed for deterrence, and that the surplus weapons simply invite mishaps which humanity cannot afford. No evidence presented to your Committee supported the Majority's argument that nuclear arms reduction could promote conventional war.

Passage of the measure could spur a national debate on nuclear arms policies. Merely placing the measure on the Oregon ballot has made nuclear arms an issue of Oregon politics, and passing it could help make nuclear arms a greater issue of national politics. Our hope is to ameliorate superpower tensions, but if that goal is beyond reach, it still is possible to help place the issue of nuclear arms at the top of the national political agenda.

This is an opportunity for citizens to have their voices heard on a global issue. Until recently, methods for avoiding nuclear war have been debated mainly by experts or by citizens in peace groups. The advice of experts and activists is indeed needed, but the ultimate issues of war and peace are moral and political choices that cannot be left to them. In the face of such a seemingly overwhelming issue, we should not assume that passage of the measure would be futile.

The measure is a symbolic gesture. Its message is: "We Oregonians are willing to sacrifice for nuclear arms reduction." It tells the President that nuclear strategy negotiations should be the top item on his agenda. It says that as long as we live in the shadow of nuclear weapons, there can be no "business as usual." For citizens to use state legislation as a billboard proclaiming their views on international relations and national defense is fully consistent with the United States Constitution. Indeed, small symbolic gestures have redirected American politics.

As with repeal of the unitary tax, the measure's effect on business location decisions would be gauged by its effect on companies' pocketbooks. The value of the political symbol justifies the small economic sacrifice that the measure might require. The direct adverse economic effects would be small, on the order of half a million dollars, and the trickle-down effects would be of the same order of magnitude. The indirect effects on the business investment climate are speculative and might operate in either direction. No company now in Oregon has threatened to leave because of the measure. Some companies might be attracted by a stand for social responsibility. If there is some sacrifice in the business climate, that would be a small price to pay for lessening nuclear tensions.

The enforcement mechanisms have been carefully crafted. Tax credits supervised by the Department of Revenue would compensate for the requirement of conversion. It is difficult to reconcile the Majority's concerns about a boondoggle for converting companies with its concerns for the business climate. In fact, the amount of the tax credit and the interpretation of the measure's terminology can be clarified through administrative rules, as with all tax measures. The Minority believes the penalties after 1990 are fair, because only knowing manufacture would be prohibited. Enforcement by citizens reduces the state's legal costs and is a proven mechanism. There are remedies for frivolous litigation (e.g. sanctions against attorneys), and the fear of nuisance suits is no reason to fail to enact an important measure.

Based on expert legal testimony before your Committee, the Minority believes the measure is legally defensible. A similar measure, banning local production of nerve gas, withstood a legal challenge in Massachusetts. A vote in favor of the measure exercises the highest duty of American citizens: petitioning the government.

VIII. MINORITY CONCLUSION

The measure might help avert nuclear war. It certainly could contribute to a national political debate on nuclear arms. It will show that Oregonians have the courage to face the enormous moral and political questions that nuclear weapons raise.

IX. MINORITY RECOMMENDATION

The minority recommends a "Yes" vote on Ballot Measure 16.

Respectfully submitted,

Ted Falk
Susan Immer
FOR THE MINORITY

Approved by the Research Board on September 19, 1986 for transmittal to the Board of Governors. Received by the Board of Governors on September 29, 1986 and ordered published and distributed to the membership for consideration and action on October 17, 1986.

APPENDIX A
Persons Interviewed

Bob Bunker, Oeco Corporation
Tom Donaca, Associated Oregon Industries
State Representative Wayne Fawbush, Hood River
Jim Huffman, faculty, Northwestern School of Law (Lewis & Clark College)
Roy Marvin, Precision CastParts
Pat McCormick, American Electronics Association
Seth Singleton, Dean, College of Arts & Sciences, Pacific University;
political scientist
Don Skinner, Petitioner
Joe Smith, Portland Freeze Coalition
Prescott W. Thompson, M.D., Physicians for Social Responsibility
Reverend Terry Voss, United Methodist Church
Linda Williams, Attorney

APPENDIX B
Bibliography

Published Documents

Voters' Pamphlet Statements in Favor:

- (1) W. Ed Whitelaw and Terry Moore, Economists
- (2) Wayne Fawbush and Don Skinner
- (3) Scientists and Medical Professionals
- (4) Oregon Religious Leaders

"War and Peace," excerpt from The Book of Discipline of the United Methodist Church, 1984.

MacKenzie and Associates, "A Phase Out of Nuclear Weapons Manufacturing: Its Implications for Oregon," Draft of a Report Commissioned by Center for Energy Research, undated.

"The Oregon Economic Conversion Initiative," Citizens for a Nuclear Free Oregon, pamphlet, 1986.

"A Pastoral Letter to All United Methodists," undated.

Legal Documents

Resolution No. 34114, Adopted by the Council, City of Portland, June 4, 1986.

U.S. Constitution, Art. I, Sect. 8, 10; Art. VI.

Amendments 2 and 5 to the U.S. Constitution.

Defense Production Act of 1950, 50 United States Code Appendix Sections 2062 and 2071.

15 Code of Federal Regulations, Part 350, Subchapter B, Defense Priorities and Allocations System.

Arthur D. Little, Inc. v. Commissioner of Health and Hospitals of Cambridge, 481 N.E. 2d 441, 395 Mass. 535, Supreme Judicial Court of Massachusetts, Suffolk. Decided Aug. 1, 1985.

Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Commission, 461 US 190, 103 Sct 1713, 75 L ed 2d 752 (1983).

Written Statements to Committee

Prescott W. Thompson, M.D., Statement to City Club Committee August 5, 1986, re Conversion Initiative, August 5, 1986.

David Pollack, M.D., "The Psychological Benefits of the Nuclear Weapons Conversion Act", July 31, 1986.

W. Fawbush and D. Skinner, "Ballot Measure No. 16: "What it Will and Won't Do," August 19, 1986.

Id., "Summary of A Phase Out ***," August 19, 1986.

Appendix C
TEXT OF MEASURE 16

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OREGON:

Section 1. It is the policy of the State of Oregon to assist businesses in the conversion from nuclear weapons production. This policy shall be implemented through tax relief to Oregon businesses that convert from manufacture of nuclear weapons or nuclear weapon components to manufacture of consumer products.

Section 2. Any person who manufactures nuclear weapons or nuclear weapon components may apply for a tax credit as provided in sections 3 and 4 of this Act if:

(1) That person makes an expenditure in Oregon for retraining of Oregon employees specifically to convert from manufacture of nuclear weapons or nuclear weapon components to manufacture of a consumer product;

(2) That person makes a capital investment in Oregon specifically to convert from manufacture of nuclear weapons or nuclear weapon components to manufacture of a consumer product; and

(3) The cost of conversion is certified as specified in section 3 of this Act.

Section 3. (1) There is created a Governor's Task Force on Nuclear Weapons Conversion. The Governor shall appoint nine members to the task force. The term of office of each member is four years, except as such term may be interrupted by retirement of the task force as provided in this section. If there is a vacancy for any cause, the Governor shall make an appointment for the unexpired term. Task force members shall serve without pay, but shall be compensated as provided in ORS 292.495. Staff work necessary to task force operation shall be provided by a member of the Governor's staff. The task force shall be retired on January 1, 1991.

(2) The task force shall identify those businesses that manufacture nuclear weapons or nuclear weapon components in Oregon, and shall advise those businesses of the tax credit available through conversion to manufacture consumer products.

(3) Upon written application containing the necessary information, the task force shall certify those costs of conversion that it determines qualify for a tax credit under section 4 of this Act and the tax year of the taxpayer for which the certification is first issued.

Section 4. (1) Upon certification of the costs of conversion pursuant to section 3 of this Act, a taxpayer shall be allowed a tax credit against taxes otherwise due under ORS chapter 316, 317 or 318 in an amount that is the lesser of:

(a) Thirty percent of the certified costs of conversion actually paid or incurred by the taxpayer; or

(b) The total tax liability of the taxpayer determined without regard to this section for three successive tax years beginning with the tax year for which certification is first issued as specified by the task force under subsection (3) of section 3 of this Act.

(2) A credit pursuant to this section may be claimed only on the basis of costs of conversion certified by the task force on or after January 1, 1987, and before January 1, 1990.

(3) Any amount of the tax credit allowable under this section which is not used by the taxpayer for the tax year for which a certification is first issued by the task force may be carried forward and offset against tax liability for the second and third succeeding tax years, but may not be carried forward for any year thereafter.

(4) The credit allowed by sections 1 to 7 of this Act shall be in addition to any other tax benefit and shall not affect basis.

Section 5. (1) A claim for a tax credit pursuant to a certification shall be substantiated as prescribed by rule of the Department of Revenue.

(2) Any amount of unused tax credit, up to the amount of tax liability of the transferee, may be transferred in the event of sale, exchange or other transfer of a business that has received certification.

Section 6. As used in sections 2 to 5 of this Act:

(1) "Capital investment" means the amount of money a person invests to acquire, retool or construct equipment or machinery necessary to manufacture a consumer product. "Capital investment" does not include purchase of land or buildings.

(2) "Consumer product" means a product for individual, industrial or business use.

(3) "Costs of conversion" includes all expenditures for retraining Oregon employees and any capital investment in Oregon made specifically to convert from the manufacture of nuclear weapons or nuclear weapon components to the manufacture of a consumer product.

(4) "Task force" means the Governor's Task Force on Nuclear Weapons Conversion established under section 3 of this Act.

Section 7. As used in sections 1 to 9 of this Act:

(1) "Nuclear weapon component" means:

(a) Any part of a nuclear weapon that is designed specifically and exclusively for use in a nuclear weapon; or

(b) Materials which are refined or manufactured to be used in devices described in subsection (2) of this section, if the by-products of those materials include radioactive wastes as defined in ORS 469.300.

(2) "Nuclear weapon" means any device the intended explosion of which results from the energy released by reactions involving atomic nuclei by either fission or fusion or by both, including the means of propelling, guiding or triggering the device if the means is destroyed or rendered useless in propelling, guiding, triggering or detonation of the device.

(3) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, and public and private institutions.

Section 8. Any individual shall have the right to enforce provisions of section 9 of this Act by an appropriate action for declaratory or injunctive relief. Reasonable attorney fees and costs shall be awarded to a prevailing plaintiff in such an action.

Section 9. (1) No person shall knowingly engage in the manufacture of nuclear weapons or nuclear weapon components after January 1, 1990.

(2) In addition to any other liability or penalty imposed by law, the State Fire Marshall may impose a civil penalty in an amount not to exceed \$5,000 for each day of each violation against any person who violates subsection (1) of this section. The provisions of ORS 453.357 shall apply to such civil penalties.

Section 10. Notwithstanding the provisions of section 9 of this Act, that section does not prohibit the manufacture of nuclear weapons or nuclear weapon components pursuant to a contract entered into before the effective date of this Act. However, section 9 of this Act does apply to the extension or renewal of a contract on or after the effective date of this Act if the original contract was entered into before the effective date of this Act.

